

AGRICULTURAL EMPLOYMENT AND WORKFORCE PROTECTION ACT
OF 2005
(Senator Saxby Chambliss)

This bill addresses agricultural workforce concerns and illegal immigration issues within the agriculture/agribusiness industry by streamlining and expanding the existing H2A program, providing a one-time transition period for unauthorized workers to obtain legal, temporary nonimmigrant status and creating a program modeled on the existing H2A program for agricultural workers and employers within daily commuting distance of the border.

Title I—Border Security

This title provides resources and additional authority for the US government to take control of our borders and enforce immigration laws within the country.

- Requires that the Secretary of Homeland Security establish a comprehensive plan for securing the nation's borders and enforcing immigration laws.
- Until the Secretary of Homeland Security establishes a comprehensive plan that Congress approves:
 - Requires that the Secretaries of Homeland Security and Defense coordinate the use of Defense equipment and assistance with surveillance at the borders.
 - Provides additional resources such as additional full-time Customs and Border Patrol agents, more checkpoints and detention centers and additional DHS staff to investigate immigration status violations.
 - Allows local and state law enforcement officers with appropriate training to enforce immigration laws; requires the federal government to take custody of violators or provide funding for their detention; and expands the category of inadmissible aliens to include gang members and aliens convicted of felonies or misdemeanors.

Title II—Reform of the H2A Program

This title expands and streamlines the H2A program, a non-immigrant, work-related program presently available to agricultural employers whose workforce needs cannot be met by the current supply of domestic temporary farm workers. Also establishes a temporary, non-immigrant temporary worker program (H2AA) for those agricultural employers and workers within daily commuting distance of the border.

- Reduces the amount of paperwork in the application process and streamlines the process by which the validity of the employer's petition for temporary foreign workers is determined.
- Broadens the definition of eligible employers to include fish, poultry and meat processing, forestry, landscaping, fishing and livestock and dairy production.
- Provides a waiver of the 3/10 year ban for those workers whose current employers wish to participate in the H2A program.
- Requires employers who participate in the program to pay local prevailing wages specific to occupation as determined by US Department of Labor survey methodology rather than general, non-specific agricultural wages as determined by the US Department of Agriculture's survey methodology.
- To encourage domestic workers to apply for agricultural jobs, the maximum period of employment under H2A has been increased from ten months to eleven months; and active recruitment of US workers is required as a condition of employing temporary foreign workers.
- Requires the US Department of Labor to increase the number of random audits and investigations of program users to ensure compliance with US workplace laws and regulations.
- Creates a new, Level II H2A worker category for supervisors who have been H2A workers for three years. After five years in Level II category, the employer may file for permanent work-related immigrant status on behalf of that worker. The Level II foreign worker may continue to work and return to their country of nationality through the H2A program while the petition is being adjudicated.
- Leaves unchanged the requirements that employers pay a processing fee to the US government, reimburse workers' transportation, guarantee three-quarters of the hours offered and provide no-cost housing and provide Workers' Compensation coverage.
- Allows the employer to provide a housing allowance in lieu of actual employer-provided housing if such rental housing is available in the community, but requires the employer to provide the US government the names and local addresses of all workers so housed. Mandates that the US

Department of Labor conduct pre-occupancy housing inspections upon request as well as inspections of occupied housing during audits and investigations.

- Clarifies the intent of Congress by restating language in the Fair Labor Standards Act requiring reimbursement of pre-employment costs during the first week of employment. Defines non-reimbursable pre-employment costs.
- To ensure that foreign workers' ties to their country of nationality remain strong, mandates limits to a foreign worker's continuous stay in the US without returning to his/her country of nationality for specified periods, but allows employers to extend work periods as necessary to ensure that crops are planted, cultivated and harvested timely, not to exceed a continuous period of more than 33 months.
- Provides for and establishes time frames for mediation prior to any litigation. Clarifies private property rights and requires that foreign nationals be present in the US in order to receive tax-payer supported legal services.
- Requires DHS to provide each H2A worker with a tamper and counterfeit-proof document with biometric identifiers and requires the H2A employer to verify the work authorization of all domestic worker hires.
- Establishes a temporary, non-immigrant temporary worker program for those agricultural employers and workers within daily commuting distance of the border.

H2AA Border program

- With the exception of the requirements regarding transportation reimbursement and housing, participation in H2AA requires agricultural employers to comply with the same laws and regulations that govern participation in H2A, including payment of prevailing wages.
- The exclusion of no-cost housing and reimbursement for travel applies only to those who enter and exit the United States on the same day. Those employers whose employees are unable to enter and exit the United States daily shall use the H2A program.
- Users of the H2AA program are given a secure document containing biometric identifiers that can confirm the workers' entry into and exit from the U.S. each day.

Title III—Creation of a “Blue Card” Non-immigrant Work-related Status

To encourage unauthorized foreign workers and their employers to comply with US immigration law, this bill offers a one-time, 24-month, time-limited opportunity for agricultural employers to temporarily adjust the status of their workers before requiring them to participate in a legally authorized method of securing workers from outside the country.

- Allows an agricultural employer to petition for two-year blue card status for out-of-status workers who have been employed in agriculture for 1600 hours in 2005 and who have been deemed eligible by DHS screening and background checks.
- Requires a petition on behalf of each worker and a fee of \$3000 per petition. The petition must attest that the employer has actively, but unsuccessfully recruited US workers to fill the job(s) described in the petition and that he/she will comply with all applicable labor laws and regulations, including payment of prevailing wages. The worker must attest to the accuracy of the information provided and must also waive his/her rights to appeal the decision of DHS regarding eligibility for blue card status.
- Allows holders of blue cards to work for other employers who file a petition on their behalf, but requires all employers to notify DHS within 24 hours if the worker ceases to be employed.
- Sets forth the circumstances under which blue cards can be revoked, among which are fraudulent applications, conviction of felonies or misdemeanors, attempts to adjust to permanent status, a 6-month period of continuous unemployment.
- Requires that all blue card petitions be filed within six months of the date of enactment of this bill and that all petitions be adjudicated by DHS within twelve months.
- Limits blue card status to two years, after which the worker must return to the country of last residence. Former blue card workers can then apply for re-entry under any program for which they are eligible. (Violation of any terms or conditions of blue card status will result in ineligibility for that category as well as any other immigration category for which the alien could otherwise be eligible.)
- Provides safe harbor for employers and aliens who apply for blue card status. The alien can work and will not be deemed inadmissible or deportable while the petition is being processed. The employer is granted safe harbor from civil and criminal tax liability arising from previous employment of the alien for whom he is petitioning.
- Creates harsh penalties for knowingly and willfully falsifying or concealing facts on a blue card petition which include monetary fines and/or five years in prison.